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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

May 26, 2005

AO-05-07

Mitch Cohen
25 Marilyn Drive
Douglas, MA 01516

Re: Use of Internet for Fundraising

Dear Mr. Cohen:

This letter is in response to your request for an opinion regarding the extent to which, under the campaign finance law, a political committee may use the Internet in a number of specific ways for fundraising purposes.

You have stated that you are a member of a town political party committee. The committee has discussed various methods of revenue-generation that are used in the private sector, and you have asked if the committee may also use them. Each option, as described in your letter, is listed below, followed by a discussion of any concerns raised by the option under the campaign finance law.

OPTION 1: CREDIT CARD DONATIONS VIA THIRD-PARTY PROCESSING

The Internet companies Amazon.com and Paypal offer the service of collecting credit card payments for organizations that do not have credit card processing capability. A potential contributor would, via a link from your committee's website, view an Amazon or Paypal website. On that page they would enter their name, the dollar amount of their contribution, and credit card information. The contributor's credit card would be charged for the amount of their contribution. Amazon or Paypal would pay you the amount of the contribution, minus a processing fee (2.9% plus 30 cents per transaction). For example, a contributor would enter \$100.00 on the donation page. The contributor's credit card would be charged \$100.00. Your committee would receive \$96.80. This is similar to how credit cards are processed for those using bank merchant services for processing. The committee would record the contribution as \$100.00 from the contributor, and would also record an expenditure of \$3.20.

RESPONSE

This fundraising method would comply with the campaign finance law. *See* OCPF Memorandum M-04-01, which states that contributions solicited through a committee's website may be received through Paypal, as long as (1) the committee site conforms to 970 CMR 1.09(2)(b), the campaign finance regulations governing websites that solicit Internet credit card contributions made via the Internet, and (2) the funds received by Amazon or Paypal are derived from contributors' credit cards and not from any other source, e.g., a contributor's bank account or debit card.

Subject to the applicable limitations, candidates and political committees may accept contributions from individuals made by credit card. Campaign finance regulations at 970 CMR 1.09 govern this activity. Among other things, these regulations set forth the criteria for websites that solicit political contributions. Specifically, the sites must: (1) set forth questions requiring an affirmative response from a contributor to determine that the source and amount of the contribution complies with M.G.L. c. 55 and 970 CMR 1.09; (2) clearly identify the name of the candidate or committee involved in the solicitation; (3) require a contributor to certify with an affirmative action that the contributor is responsible for making payments on the credit card and that the contributor's personal funds will be the true source of the contribution as required by M.G.L. c. 55, § 10; and (4) clearly distinguish between required and optional information collected. In addition, each contributor must promptly receive an e-mail confirmation of the contribution from the campaign. *See* 970 CMR 1.09(2)(b).

M-04-01 discusses the disclosure required by political committees that receive credit card contributions via the Internet. As with any monetary contribution, your committee must report the gross amount received from credit card contributions on Schedule A, and all fees and costs must be reported as expenditures on Schedule B of the relevant report. The example in your question complies with this standard.

OPTION 2: INTERNET AUCTIONS OF DONATED ITEMS

The Internet company Ebay provides a service to list items for auction. Ebay collects a fee from the seller for listing each item, and also collects a percentage of the sale proceeds from the seller. The buyer pays the full sale amount directly to the seller, and nothing to Ebay. For example, if a donated item sells for \$100, and the total Ebay fee is \$20, you would record a contribution from the purchaser of \$100 and you would also record an expenditure to Ebay of \$20.

RESPONSE

This fundraising method would comply with the campaign finance law. The office has advised that a political committee may conduct a live auction in connection with a fundraising event and make expenditures in relation to such an event. *See* AO-93-31. There is no reason why a fundraising auction may not also be held on-line, provided the committee is careful to ensure compliance with the record keeping, disclosure and other requirements of the campaign finance law, including the requirements relating to the receipt of credit card contributions

specified in 970 CMR 1.09 and the relevant limitations on the amount that may be provided by any one contributor.

An item donated to the committee must be treated as an in-kind contribution from the contributor and be valued at the fair market value of the item using the item's purchase price, the bid price, or a price established by an appraisal or through other **objective** means. Like any in-kind contribution, the committee is required to report the name and address of the person contributing the item, the date of the contribution, the value of the contribution, and a description of the good or service contributed on Schedule C of the committee's campaign finance report covering the relevant period. In addition, the amount paid by a winning bidder is deemed a contribution from the bidder in the full amount of the bid. Such contributions must be disclosed on Schedule A of the committee's campaign finance reports. The committee also must ask, in writing, persons making contributions of \$200 or more during a calendar year for their occupation and employer and disclose the information received on the committee's campaign finance reports. Any fees or other costs incurred in conducting the auction must be reflected on Schedule B of the report. Finally, the committee must keep records relating to all contributions received and expenditures made.

Persons providing or bidding on items must be informed that they are making contributions to the committee when donating or paying for an item. A "contribution" is defined, in relevant part, as money or something of value given "for the purpose of supporting or opposing a political party committee..." See M.G.L. c. 55, § 1. Because individuals are required to comply with limits on what they may contribute, they must understand the extent to which they are making contributions.

You should also note that business or professional corporations, or organizations comprised of such corporations, may not contribute to the committee. See M.G.L. c. 55, § 8. Therefore, such entities may not bid on items or donate items to be auctioned.

The maximum annual contribution that may be made by an individual to all committees of any one party, including those on the state and local level, is \$5,000. You state in your letter that you recognize that your party committee may not accept more than a \$5,000 donation from an individual for one item, or a donation, which when combined with other contributions provided by the individual to the committee, would total more than \$5,000 per year. You should note, however, that if an individual, in addition to contributing to the committee *also* contributes to other party committees of the same party during the same calendar year, the maximum that the individual may contribute to your committee must be reduced accordingly. For example, if a person has already contributed \$1,000 to the relevant state party committee and a total of \$2,000 to other local party committees of the same party, he or she may contribute no more than an additional \$2,000 to your party committee. See M.G.L. c. 55, § 7A.¹

OPTION 3: RECEIPT OF REFERRAL FEES FROM INTERNET COMPANIES WHERE INTERNET COMPANIES WOULD PROVIDE FUNDS DIRECTLY TO THE COMMITTEE

Several Internet companies offer to pay referral fees to individuals or organizations based on visitors' use of links on private websites to reach the Internet companies. For example, a

¹ In contrast, the maximum annual contribution that may be made by an individual to a candidate's committee or political action committee is only \$500.

website may display an Amazon product. If a user purchases a product from Amazon via the link, Amazon pays a referral fee (usually 4%) to the originating website's owner. Alternatively, the private website may include a Google or similar search field. If a user conducts a search using the search field, he or she will be brought to Google's site, which will display various search results and advertising. If the user then clicks one of the ads, a tiny referral fee is paid by Google to the originating website's owner. In neither example does the user pay or contribute anything. In addition, the user's information is not provided to the recipient of the referral fee.

You have asked if Internet companies may pay such referral fees, presumably derived from the use of links on the committee's website, directly to the committee.

RESPONSE

Fundraising using this option would not comply with the campaign finance law. You have described a fundraising method in which corporations, based on the decisions by individuals to either purchase an item or conduct an Internet search, would provide funds directly to the committee. The campaign finance law generally does not contemplate political committees engaging in ongoing business or commercial ventures designed to generate income from corporations. *See* M.G.L. c. 55, § 8, which prohibits the receipt of funds from corporations to be used for political purposes and M.G.L. c.55, § 7, which states that committees may not conduct fundraising activities "except as authorized by this chapter."

OPTION 4: RECEIPT OF CONTRIBUTIONS FROM INDIVIDUALS WHO HAVE RECEIVED REFERRAL FEES FROM INTERNET COMPANIES

May the committee's website provide a link to an individual's website that pledges to donate referral fees similar to those described in Option 3 to the committee? For example, the committee website may have a link to John Smith's personal website, describing that link as "Visit John Smith's website for your Amazon purchases, and John will donate his referral fees to us." John Smith's website would contain the search fields described in Option 3, and would receive referral fees from Amazon and Google. John Smith would pledge to users to contribute this amount to the committee, up to his individual annual limit of \$5,000.

RESPONSE

This method would comply with the campaign finance law if records are kept and disclosure is provided.

Unlike Option 3, this fundraising method would involve the making of a contribution by the individual who earns the referral fees. Notwithstanding a pledge to do so, the individual who earns the fees may or may not decide to use the fees to make a contribution. There would be no contribution from the person who goes to the link and makes a purchase or conducts a search, even if the person is motivated in part by an interest in supporting the committee. The person who makes a purchase using Amazon, or conducts a Google search, is not thereby personally entitled to any funds with which to make a contribution and is not, by making the purchase or conducting a search, causing any of his or her funds to be forwarded to the committee.

Instead, the Internet company paying the referral fee is making a separate payment to the individual who has earned the fee. This individual (in your example, John Smith) would have control over the disposition of the funds and would be subject to the limits of the campaign finance law. He may or may not contribute the referral fees to the committee.²

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter. Please contact us if you have further questions regarding this opinion or any other campaign finance issue.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Sullivan". The signature is written in a cursive style and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS:gb

² An individual may contribute up to \$5,000 in the aggregate during a calendar year to all ward, town, city and state committees organized on behalf of the same political party. In your letter you state that "the excess, if any, would be contributed to some other related cause (such as the state party committee)." You should note, however, that the \$5,000 limit *includes* contributions made to the state party committee.